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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,344	11/21/2003	William A. Taylor	3290-11	3317
7590 VISTA GAMING CORP. 1326 ASPEN DRIVE EVERGEEN, CO 80439				
04/08/2008				
EXAMINER				
THOMAS, ERIC M				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
04/08/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/719,344

**Applicant(s)**

TAYLOR, WILLIAM A.

**Examiner**

Eric M. Thomas

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-11 and 14-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-11 and 14-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
- Paper No(s)/Mail Date 12/20/07.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This is in response to the amendments filed on 3/10/08; claims 1 – 3, 5 – 11, and 15 – 27 have been amended, claims 4, 12, and 13, have been cancelled, and claims 28 – 30 have been added. Claims 1 – 3, 5 – 11, and 14 – 30 are now pending in the current application.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1 – 3, 5 – 11, and 15 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englman (U.S. 2003/0157978) in view of Baerlocher et al. (U.S. 2002/0016200).**

Regarding claims 1 – 3, 5, 6, 8, 16, 21, and 28 – 30, Englman provides a method of using a gaming machine that provides a player with a series of plays of a single game for a single wager, (par. 0001), that discloses a display, which is used to display a plurality of parameters that is related to the game, (par. 0025), wherein the gaming device receives a plurality of player initiated actions, (par. 0026), that includes a basic game and one more bonus games that are triggered by special symbols based on the outcome in the basic game, which increases the number of plays (par. 0024), wherein a player of the gaming device is awarded a winning outcome, which is shown on a

primary or secondary display (par. 0026). The claimed invention discloses sports' and mining theme in which there are special symbols of sports related items. Englman however, provides a method of playing a gaming machine that includes a Monopoly theme, but is silent on the issue of displaying game termination symbols. In a related art, however, Baerlocher provides a gaming device that teaches the use of game - termination symbols which randomly occurs within the game - play of the gaming device, (par. 0004 and par. 0008). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include the game - termination symbols of Baerlocher into the art disclosed by Englman in order to increase player excitement while playing the gaming machine.

Regarding claim 7, Englman provides a method of playing a gaming machine that discloses a simulation that is related to the game (par. 0031).

Regarding claims 9 - 11, 17, and 20, Englman provides a method of playing a gaming machine, but is silent on the issue of including game - termination symbols that is related to the sport of American football. In a related art, however, Baerlocher provides a gaming machine that teaches the use of game - termination symbols (par. 0004, par. 0008, and fig. 8). Baerlocher does not disclose expressly game - terminating symbols that are related to an American football theme, but instead discloses a board game theme that is related to the game - terminating symbols (fig. 8). At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use American football or any kind of theme instead of the board game theme used by Baerlocher because the Applicant has not disclosed that

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using a sports' theme provides an advantage or solves a stated problem. Therefore, it would have been prima facie obvious to modify Baerlocher to obtain the invention as specified in claims 9 - 11 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Baerlocher. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include the game – termination symbols of Baerlocher into the art disclosed by Englman in order to increase player excitement while playing the gaming machine.

Regarding claim 14, Englman provides a method of playing a gaming machine wherein an appearance of at least game – extension symbol is determined by data entered by the player (par. 0024).

Regarding claim 15, Englman provides a method of playing a gaming machine wherein the game is a slot machine, (fig. 1), which provides winning opportunities within a number of reel spins when a period of play is initiated (par. 0004).

Regarding claim 18, Englman provides a method of playing a gaming machine wherein a special symbol is displayed randomly (par. 0034).

Regarding claim 19, Englman provides a method of playing a gaming machine wherein the special symbol is displayed based on the outcome of game - play (par. 0034).

**Claims 22 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englman (U.S. 2003/0157978 in view of Slomiany (U.S. 6,612,927).**

Regarding claims 22 - 26, Englman provides a method of playing a gaming machine in which determining the outcome of a game playing situation is classified as a win or loss in which the player loses a predetermined game if a loss occurs, (par. 0024), that includes a basic game and one more bonus games that are triggered by special symbols based on the outcome in the basic game, which increases the number of plays (par. 0024), wherein a player of the gaming device is awarded a winning outcome, which is shown on a primary or secondary display (par. 0026). It also includes a pay table, which indicates the player's reward for outcome of a win, along with the player's wager (par 0039). The payout amount is selectively increased based on the outcome of a win, or decreased based on the outcome of a loss, but Englman is silent on the issue of altering the pay-table between plays. In a related art, however, Slomiany provides a method of playing a gaming machine that alters the pay-table randomly and is affected by an event that occurs in the game (col. 45, lines 11 – 30). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of Slomiany in the art disclosed by Englman in order to alter the pay-table of a gaming machine depending on the outcome of a win or loss.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M. Thomas whose telephone number is (571) 272-1699. The examiner can normally be reached on 7a.m. - 3p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert E Pezzuto/  
Supervisory Patent Examiner, Art Unit 3714

